



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Meridian Corporation

File: B-246330.3

Date: July 19, 1993

Cheralyn S. Cameron, Esq., and Stuart Young, Esq., DynCorp, and Paul Shnitzer, Esq., Crowell & Moring, for the protester.

James J. McCullough, Esq., Anne B. Perry, Esq., and Joel R. Feidelman, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Science Applications International Corporation, an interested party.

Ronald E. Cone, and Paul A. Gervas, Esq., Department of Energy, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Failure of request for proposals to explicitly indicate the relative weight to be given to cost and technical considerations in the evaluation of proposals gives rise to presumption that cost and technical considerations would be accorded approximately equal weight and importance in the evaluation.

2. Protest that agency misinterpreted solicitation's evaluation scheme by according greater weight to technical considerations than to cost and by conducting cost/technical tradeoff analysis on the basis of that misinterpretation is denied where record shows protester suffered no prejudice from agency's action; agency contention that significant technical superiority of awardee's proposal would have rendered the outcome of the competition the same even if the agency had evaluated cost and technical considerations on an equal basis was reasonable.

DECISION

Meridian Corporation protests the award of a contract to Science Applications International Corporation (SAIC) under request for proposals (RFP) No. DE-RP01-91-DP30423, issued by the Department of Energy (DOE) for the provision of technical, analytical, and management support services to DOE's Office of Safeguards and Security (OSS). Meridian

argues that the agency misinterpreted the stated evaluation scheme, and conducted an inadequate cost/technical tradeoff analysis based upon that misinterpretation.

We deny the protest.

BACKGROUND

The RFP was issued on April 18, 1991, and contemplated award of a level-of-effort, cost-plus-fixed-fee contract for a 3-year base period and one 2-year option period. The work under the contract will be performed in response to specific task assignments issued by OSS, and the services contemplated will assist OSS in carrying out its responsibilities for major program functions such as physical security, personnel security, information security, material control and accountability, and other safeguards and security functions. The government estimate for the contract was \$43,725,913.

Offerors were required to submit separate technical, business management, and cost proposals. The RFP incorporated Federal Acquisition Regulation (FAR) § 52.215-16, which provides that award will be made to the responsible offeror whose offer, conforming to the solicitation, is the most advantageous to the government, cost or price and other factors specified in Section M considered.¹ Section M.005 of the RFP, "Overall Relative Importance of Evaluation Criteria," stated that the technical proposal was of significantly greater importance than the business management proposal; cost would not be rated, but if, after evaluation of the technical, business management and cost proposals, two or more competing overall proposals were within the competitive range, evaluated probable cost to the government might be the deciding factor for selection.

The RFP set forth two technical evaluation factors, understanding of and technical approach to the statement of work (SOW) and personal qualification and availability; each subfactor contained various subfactors. The rating plan established that the maximum score for the technical proposals was 1,000 points, and established a weighing system for each technical factor and subfactor. While the technical proposals were to be point-scored, the business management proposals, not at issue here, were to be adjectivally-rated. As discussed above, the cost proposals were to be neither point-scored nor adjectivally-rated.

¹The RFP also contained qualification criteria which identified minimum qualifications, concerning personnel security requirements, that a firm must possess to be considered for award; these qualification criteria are not at issue here.

By May 20, 1991, the closing date for receipt of initial proposals, DOE received three offers from three companies: Meridian, SAIC, and ERC Environmental and Energy Services Co., Inc. (ERCE). The technical and business management proposals were individually evaluated and the Source Evaluation Board (SEB) met to develop a consensus score; in addition, limited cost/price analyses of the cost proposals were performed. Based upon these initial evaluations, on September 26, the Source Selection Official (SSO) determined that neither Meridian nor ERCE had a reasonable chance of being selected for award and thus eliminated them from the competitive range; ERCE subsequently protested this determination to our Office. On November 8, in response to the protest, DOE decided to reestablish the competitive range to include all offerors, conduct written discussions, receive revised proposals and evaluate the revised proposals. In light of this corrective action, ERCE withdrew its protest on November 21.²

By letters dated April 2, 1992, DOE submitted discussion questions to each of the three offerors, and requested written responses by May 4. Both Meridian and SAIC submitted revised proposals³ that were subsequently evaluated by the SEB. The SEB conducted further oral discussions with Meridian and with SAIC on November 23 and 24, respectively, and requested the submission of best and final offers (BAFO) by December 8. After the receipt of BAFOs, the SEB reopened cost discussions and requested revised BAFOs by January 21, 1993. The SEB evaluated the revised BAFOs and the cost analyst evaluated each offeror's cost proposal to determine the probable cost and to assess cost realism. The consensus ratings and probable costs were as follows:

<u>Offeror</u>	<u>Technical</u>	<u>Business Management</u>	<u>Probable Cost</u>
SAIC	800	Fully Satisfactory	\$45,106,928
Meridian	533	Fully Satisfactory	\$36,658,632

On March 2, the SSO signed a Selection Statement recommending SAIC for award. The SSO stated that while SAIC's probable cost was higher than Meridian's, the cumulative strengths of SAIC in two extremely important areas strongly outweighed any cost premium to the government. Award was

²ERCE also withdrew its supplemental protest, B-246330.2, concerning an alleged DOE violation of the Office of Federal Procurement Policy Act, 41 U.S.C. § 423 (1988 and Supp. III 1991).

³ERCE withdrew from the competition and did not submit a revised proposal.

made to SAIC on March 4, and Meridian subsequently protested to our Office. Performance has been suspended pending resolution of this protest.⁴

DISCUSSION

Meridian argues that DOE misinterpreted the stated evaluation scheme by placing the primary emphasis on the technical factors in the evaluation. According to Meridian, the evaluation scheme set forth in the RFP gave primary emphasis to cost, or, at the very least, gave equal weight to cost and the technical factors. The RFP's section M.005, "Overall Relative Importance of Evaluation Criteria," states:

"The Technical Proposal . . . is of significantly greater importance than the Business Management Proposal. . . . The Technical Evaluation Criteria will be assigned numerical weights and point scored, while the Business Management Evaluation Criteria will be adjectivally rated.

"The Cost Proposal is neither point scored nor adjectivally rated. However, if after evaluation of the Technical, Business Management and Cost Proposals, two or more competing overall proposals are within the competitive range, evaluated probable cost to the [g]overnment may be the deciding factor for selection, depending on whether the most [acceptable⁵] overall proposal (excluding cost consideration) is determined to be worth the cost differential, if any. . . . The proposal will be selected which is considered to be in the best overall interest of the [g]overnment."

Under a solicitation like the one here, which calls for award on the basis of best overall value to the government, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Institute of Modern Procs., Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. The RFP here does not so specify. It states that evaluated probable cost to the government may be the deciding factor

⁴After this protest was filed, Meridian filed another protest, B-246330.4, concerning the agency's analysis of the organizational conflicts of interest presented by SAIC's proposal. This protest will be decided in a separate decision.

⁵While the language of the solicitation uses the expression "most 'accepted' overall proposal," we assume that the agency intended to say "most 'acceptable' overall proposal."

for selection, if the most acceptable overall proposal is determined to be worth the cost differential, but does not otherwise state whether cost is more or less important than the technical factors.

This failure to disclose the relative importance of cost to the technical factors violates the Competition in Contracting Act of 1984, 41 U.S.C. § 253a(b)(1), FAR § 15.605 (e), and DOE's own regulations. DOE's Source Evaluation Board Handbook requires that solicitations state the "relative importance of the technical criteria to the . . . cost criteria," as well as the "relative importance of cost in the evaluation." DOE Acquisition Regulations Handbook, Source Evaluation Board, §§ 204, 205 (Feb. 1986). Although the defect in the solicitation was clear--Meridian itself describes the omission as "glaring"--Meridian failed to protest or even question this omission prior to the date set for receipt of initial proposals, when the issue could easily have been resolved. Any protest of the terms of the RFP is now untimely. 4 C.F.R. § 21.2 (1993).

Where an RFP such as this one fails to explicitly indicate the relative weight to be given to cost and technical considerations, it must be presumed that cost and technical considerations will be accorded approximately equal weight and importance in the evaluation. Johns Hopkins Univ., B-233384, Mar. 6, 1989, 89-1 CPD ¶ 240. Meridian argues that the agency's cost/technical tradeoff analysis did not reflect an equal weighing of cost and technical considerations. Meridian contends that the SSO improperly made award based solely on SAIC's superior technical rating.

SSOs in a negotiated procurement have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Award may be made to a higher rated, higher cost offeror so long as the result is consistent with the evaluation criteria and the procuring agency has reasonably determined that the technical difference is significantly sufficient to outweigh the price difference. As discussed above, since the RFP was silent as to the relative weight to be given to cost and technical considerations, we will presume that these considerations will be accorded equal weight and importance in the evaluation. While it is not clear from the record that the agency did, in its evaluation, accord equal weight to these considerations, we find reasonable the agency's contention that even if it had done so, Meridian would still have been the unsuccessful offeror.

As the agency explains, the SSO determined that SAIC's proposal was so technically superior that, despite Meridian's lower cost, SAIC's proposal represented the best value to the government; while SAIC's probable cost exceeded

Meridian's probable cost by 23 percent, SAIC's technical proposal score exceeded that of Meridian by 50 percent. In light of this disparity, DOE states that, because the adjectival evaluation of the business management proposals was equal for both offerors, if cost is considered equal to technical considerations, Meridian would still lose by a significant margin. As noted above, the SSO stated that the cumulative strengths of SAIC's technical proposal strongly outweighed any cost premium to the government.

Meridian does not dispute the SEB's evaluation of its technical proposal.⁶ Rather, Meridian argues that it was prejudiced because, had it known that DOE, in evaluating its proposal, would place primary emphasis on the technical considerations, it would have emphasized innovativeness and enhancements to the required work, and offered more experienced and more highly compensated personnel, albeit at a higher cost. We are not persuaded by this argument.

Meridian's initial position in this protest was that the RFP language indicated that cost would be the most important evaluation factor. In its comments on the agency report, Meridian submitted the affidavit of its president, who directed the preparation of the firm's cost proposal, in which he attested that he believed "cost was a significant factor," and that "cost was [not] subordinate in significance" to the other factors. As a result, it is unclear whether Meridian prepared its proposal under the unreasonable assumption that cost was the most important evaluation factor, or whether it was under the assumption that cost and technical considerations were of equal importance. Moreover, even when we presume, as Meridian now urges us to do, that cost and technical consideration were of equal importance, the record shows that Meridian did not even meet the technical requirements called for by the RFP. The evaluation criteria for the "technical approach" subfactor clearly required innovativeness, which the SEB found lacking in Meridian's proposal. Further, the evaluation documents show, and the protester does not dispute, that Meridian failed to meet the minimum RFP requirements under the "key personnel" subfactor. If Meridian prepared its proposal


⁶We find Meridian's argument that the agency evaluated its proposal according to an unstated evaluation factor, "technical excellence," to be without merit. Meridian bases this contention primarily upon a statement in the agency's notification of award letter: "your proposal did not demonstrate technical excellence." Our review of the record here does not show that "technical excellence" was used as an evaluation factor; rather, we agree with the agency that its reference to "technical excellence" was descriptive only and intended to summarize for Meridian the DOE award decision.

under the assumption that cost and technical considerations were of equal importance, we do not understand why it did not then, for example, offer more experienced personnel in order to meet the minimum technical requirements.

As for Meridian's complaint that DOE was looking for a "gold-plated" proposal, this solicitation did not contemplate an award to the low-priced, technically acceptable offeror--it provided for the possibility of an award to an offeror with a technically superior proposal. Under such circumstances, agencies properly may give evaluation credit for superior proposals that will better satisfy their needs, and we think that the protester should have been aware that DOE could do so here. See Astrophysics Research Corp., B-228718.3, Feb. 18, 1988, 88-1 CPD ¶ 167; Computer Sciences Corp., B-189223, Mar. 7, 1978, 78-1 CPD ¶ 234.

SAIC's estimated cost was only 23 percent higher than Meridian's while its technical proposal was scored 50 percent higher than Meridian's. While these percentages do not necessarily represent the relative value of the cost and technical differences between the two proposals, the detailed discussion of the proposals by the SEB and the selecting official persuades us that the technical differences were more significant than the difference in cost, assuming that technical factors and cost are equally weighted. As a result, we find reasonable DOE's contention that the outcome of the competition would have been the same regardless of whether the agency accorded equal weight to cost and technical considerations, or whether the agency placed primary emphasis on technical considerations. Since we will not sustain a protest in the absence of some evidence in the record that the protester was prejudiced, we deny the protest because the agency's action did not affect the protester's competitive position.

The protest is denied.


for James F. Hinchman
General Counsel